

BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

MICHAEL J. GONSIOR,)	DOCKET NO.: PT-1997-32
)	
Appellant,)	
)	
-vs-)	
)	
THE DEPARTMENT OF REVENUE)	FINDINGS OF FACT,
OF THE STATE OF MONTANA,)	CONCLUSIONS OF LAW,
)	ORDER and OPPORTUNITY
Respondent.)	<u>FOR JUDICIAL REVIEW</u>

The above-entitled appeal was heard on the 5th day of August, 1998 in Missoula, Montana in accordance with an order of the State Tax Appeal Board of the State of Montana (the Board). The notice of the hearing was given as required by law.

The taxpayer, Michael J. Gonsior, presented testimony in support of his appeal. The Department of Revenue (DOR), represented by appraiser Pat McKenna, presented testimony in opposition to the appeal. Testimony was presented, exhibits were received, and a post-hearing submission was requested from the DOR. After receipt of this post-hearing submission, the Board then took the appeal under advisement.

The Board, having fully considered the testimony, exhibits, and all things and matters presented to it by all parties, finds and concludes as follows:

FINDINGS OF FACT

1. Due, proper, and sufficient notice was given of this matter and of the time and place of the hearing. All parties were afforded the opportunity to present evidence, oral and documentary.

2. The taxpayer is the owner of the property which is the subject of this appeal and which is described as:

Milltown Improvements, Lots 7 & 8, Block 13,
Section 21, Township 13 North, Range 18 West,
County of Missoula, State of Montana,
Improvements Only. (Assessor's Code 752708)

3. The subject improvements are located on land the taxpayer leases from Montana Rail Link, Lease No. Main 063,698.
(TP Ex 15)

4. The taxpayer filed an AB-26 Property Review Form with the DOR and was advised of the results of that review in a September 18, 1997 letter signed by Larry Barrett, Missoula County Residential Appraiser. (TP Ex 17) That letter stated, in part:

After reviewing the improvements located at Milltown Improvements, lots 7&8, block 13, Geo code 2201-21-2-19-07, no changes have been deemed necessary. The grade and CDU were reduced as per the 1994 Missoula County Tax Appeals Board, and have remained at that grade and CDU into the 1996 reappraisal and the resulting 1997 values. The \$ 48,550 is the value of the dwelling is the result of the 1996 reappraisal....

The letter concluded with a description of the calculation of the 1997 property taxes applying the 2% phase-in provisions.

5. The \$48,500 value was determined by the DOR using the cost approach to value with a replacement cost new calculation of \$54,650 from which 42% depreciation was subtracted. To that result the DOR applied an economic condition factor (ECF) of 118%.

6. On September 22, 1997 the taxpayer appealed to the Missoula County Tax Appeal Board, requesting a value of Anil@ and stating:

Appraised value was set at \$24,550 by the Missoula County Tax Appeal Board in August 1994, and later reduced to \$20,470 by the Assessor. Subsequently, the only change of consequence has been a large increase in the land lease fee, the effect of which should be a reduction in appraised value.

7. In its November 19, 1997 decision, the county board disapproved the appeal, stating:

The appellant believes that the DOR should discount the value of his improvements because the landlord could terminate the lease giving only thirty days notice. The value of the improvements would be the same at a different location. Recognition of the financial risk he faces is reflected in the minimal charge he pays for that site the possible termination of use of that land and not the value of the structures.

In 49 years, notice has not been given. We do not know if other lessees have been asked to vacate similar properties; however, a neighbor recently sold a similarly situated property for \$45,000. It appears that any realistic purchase price for the original improvements would have been recovered several times over given the low annual lease fee.

The continued use of the site has weathered many lessor difficulties including aggressive trucking competition, the loss of passenger travel and a change of ownership. It appears that the subject land plays a minor role in corporate planning

and makes a negligible contribution to profit; its continued use by the appellant seems likely.

This years appraised value of \$48,550 was appealed. The DOR made a site inspection to validate its appraisal and discovered numerous discrepancies.

The DOR corrected error of measurement, CDU and additional features and construction materials; also the grade was changed to FAIR (because of the 30-day notice). This years= value of \$48,550 will rise to \$61,100 after all adjustments have been made.

8. The taxpayer appealed the county board decision to this Board on December 12, 1997, stating:

Decisions of MCTAB are not supported by market evidence or professional appraisals. Increase to \$61,000 for 1998 is invalid because it is a result of errors in assessors records, and not due to alterations of the property.

9. The DOR requested a 1997 value for the subject property of \$61,100 at the hearing before this Board. This value was derived using the sales comparison approach to value.

Corrections in measurements were recorded, a partial basement and paving were added (DOR Ex D), and a new Montana Comparable Sales sheet was generated. (DOR Ex F)

TAXPAYER-S CONTENTIONS

The taxpayer stated his understanding was that the valuation date of the 1997 reappraisal is January 1, 1996. He revised his requested value to \$27,000.

DEPARTMENT OF REVENUE'S CONTENTIONS

The DOR stated that the county tax appeal board sent

a letter to the taxpayer informing him that the DOR had corrected an error in measurement, CDU, additional features, and construction materials, resulting in an increase of the 1997 value from \$48,550 to \$61,100 after all adjustments had been made. In addition to this letter, a corrected assessment was mailed to the taxpayer indicating a 1997 value of \$61,100.

DISCUSSION

Using the cost approach, the subject property was valued by the DOR at \$48,500, and the taxpayer was advised of that value. At the request of the taxpayer, the property was reviewed by the DOR, and the DOR attested to the \$48,500 value, stating no changes were necessary for this value established for the 1997 tax year. This value, however, was increased by the DOR after the taxpayer appealed to the county tax appeal board. The property was again reviewed by the DOR and this time, using a comparison sales approach, the property was re-valued at \$61,100.

No evidence or testimony was presented to this Board to prove there had been changes to the property. The most recent 1997 tax year value of \$61,100 determined by the DOR is, in the opinion of this Board, a new value that constitutes a selective reappraisal rather than a correction of errors.

The initial 1997 reappraisal valued the subject property using the cost approach. Inasmuch as the subject

property is located on leased land, unless a sales comparison approach were employed using comparable properties on leased land, it is the opinion of this Board that the cost approach is the most appropriate method of valuing the subject property.

After the calculation of the replacement cost of the subject property and the deduction of depreciation, an ECF of 118% was applied. The ECF is a market adjustment factor. The International Association of Assessing Officers (IAAO) states:

Market adjustment factors are often required to adjust values obtained from the cost approach to the market. These adjustments should be applied by type of property and area based on sales ratio studies or other market analyses. Accurate cost schedules, condition ratings, and depreciation schedules will minimize the need for market adjustment factors. (IAAO, 1990, Property Appraisal and Assessment Administration, pages 311-312)(Emphasis applied)

An ECF for a neighborhood is derived from sales; but there was no evidence or testimony from the DOR to indicate the ECF applied was developed from sales of properties of the same type, that is, sales of properties located on leased land.

There was no indication that the same market exists in the neighborhood of the subject property for sales of properties located on leased land. It follows, therefore, that the ECF ought to be removed.

Based on the evidence and testimony presented, it is the opinion of this Board that the most appropriate method of

determining a value for the subject property is utilization of the cost approach to value; further, the cost figures attested to by the DOR following the AB-26 property review should be the cost figures used. This value then, after removal of the economic condition factor, shall be the 1997 reappraised value for the subject property. As determined by the Board, this value is \$41,717.

This appeal is granted in part and denied in part and the decision of the Missoula County Tax Appeal Board is reversed.

CONCLUSIONS OF LAW

1. The State Tax Appeal Board has jurisdiction over this matter. '15-2-302 MCA

2. **'15-8-111, MCA. Assessment -- market value standard -- exceptions.** (1) All taxable property must be assessed at 100% of its market value except as otherwise provided.

3. It is true, as a general rule, that the appraisal of the Department of Revenue appraisal is presumed to be correct and that the taxpayer must overcome this presumption.

The Department of Revenue should, however, bear a certain burden of providing documented evidence to support its assessed values. (Western Airlines, Inc., v. Catherine Michunovich et al., 149 Mont. 347, 428 P.2d 3, (1967)).

ORDER

IT IS THEREFORE ORDERED by the State Tax Appeal Board of the State of Montana that the subject property shall be entered on the tax rolls of Missoula County by the assessor of that county at a 1997 tax year value of \$41,717.

Dated this 13th day of October, 1998.

BY ORDER OF THE
STATE TAX APPEAL BOARD

PATRICK E. McKELVEY, Chairman

(S E A L)

GREGORY A. THORNQUIST, Member

LINDA L. VAUGHEY, Member

NOTICE: You are entitled to judicial review of this Order in accordance with Section 15-2-303(2), MCA. Judicial review may be obtained by filing a petition in district court within 60 days following the service of this Order.